IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9776 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHESH DAYABHAI ODD

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UDAI R BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 14/11/2000

ORAL JUDGEMENT

1. This petition is filed by the petitioner against the order passed by the Police Commissioner, Surat, on 29th June, 2000, under the powers conferred by S. 3(1) of the Gujarat Prevention of Anti-Social Activities Act,

1985 (PASA) for short), by which the petitioner came to be detained under that Act from 29th June, 2000.

2. The fact reveals that vide order dated 29th June, 2000, the Police Commissioner, Surat, came to the conclusion that the petitioner was a "dangerous person" within the meaning of S. 2(c) of the PASA Act. For the subjective satisfaction, Commissioner of Surat, took into consideration four crimes registered against the petitioner. The first crime was registered against the petitioner in Rander Police Station, vide Crime Register No. I-76/2000 u/s 379 of the Indian Penal Code and it was alleged that on 24th of March, 2000, the petitioner has stolen one Kinetic Motorcycle by opening the same with duplicate key and was caught by Navasari Rural Police Station Officers. At the time of the passing of the order, the case was pending. In this case, the petitioner was under custody from 4th May, 2000. The second crime was registered against the petitioner was before Umra Police Station vide Crime Register No. I-107/2000, under section 379 of the Indian Penal Code. As per the allegation, a Sunny Moped was stolen by the petitioner on 9th February, 2000 from the parking of 19-B Paritosh Apartment, Surat and the petitioner was arrested on 5th May, 2000. The third crime that was registered against the petitioner was Crime Register No. 16 of 2000 before DCB Police Station, Surat, under Sec. 379 of the Indian Penal Code. As per the allegation, on 15th March,2000, one LML Trendy Scooter was stolen by the petitioner near Raghuphul market after applying duplicate key and the trial was pending before the court. The fourth crime was registered against the petitioner on 13th March, 2000 before DCB Police Station, Surat, vide Crime Register No. 17 of 2000, under Section 379 of the IPC. As per the allegation, the petitioner had stolen one Bajaj Sunny Moped after opening the same by a duplicate key and was abandoned near Shefali flat. The trial was also pending against the petitioner for this also. Police Commissioner also took into consideration the statements of two witnesses, who gave their statements on assurance of keeping their identity secret. The incident, which witnesses narrated were dated 6th of March, 2000 and 18th of April, 2000. According to this statement on assumption that the concerned witness was giving information to the Police about the theft committed by the petitioner, petitioner had beaten the witnesses and due to fear of the petitioner, neither witness filed any complaint nor were prepared to disclose his identity. Police Commissioner, Surat, therefore, came to the subjective satisfaction that in cases pending against him, the petitioner will be released on bail and

shall continue his anti social illegal activities. Commissioner also considered that no action under the Bombay Police Act for externment could also be taken against the petitioner because there was no conviction to the petitioner. The Commissioner of Police came to the conclusion that the petitioner is a "dangerous person" and his anti social activities were required to be prevented forthwith which could only be prevented through detention under PASA Act. Therefore, the order of detention came to be passed.

3. Learned Advocate Mrs. Subhadraben Patel for the petitioner and learned AGP Mr. Udai R. Bhatt for the respondents.

4. The detention order is challenged on various grounds in this petition under Article 226 of the Constitution of India. One of the grounds is the petitioner at the time of passing of the order was under custody and that less drastic action were not considered by the Commissioner of Police i.e. detaining authority and, therefore, the subjective satisfaction of the detaining authority is vitiated.

5. It requires to be examined thoroughly that detaining authority reached to subjective satisfaction after applying mind properly. Subjective satisfaction is required to be reached with reference to the existing state of affairs and the facts which could have satisfied the detaining authority.

6. The purpose of the PASA Act is made clear by preamble, which is as under :

" to provide for for preventive detention of bootleggers, dangerous persons, drug offenders, immoral traffic offenders and property grabbers for preventing their antisocial and dangerous activities prejudicial to the maintenance of public order. "

Section 3 of the PASA Act which empowers the State Government and certain officers to pass detention orders clearly lays down that when Government or such officers

if satisfied with respect to any person that with a view to preventing him from acting any manner prejudicial to

the maintenance of public order, it is necessary to make an order directing that such person be detained. The distinct essentias which we found from the provisions of the PASA Act are (i) prejudicial manner of any person to the maintenance of public order and (ii) prevention of such activities of such person which may be prejudicial to the maintenance of public order. Prevention is kernel of the PASA Act and, therefore, vast power for the detention without trial has been conferred upon the Authorities and the State. Subjective satisfaction envisaged in the provisions of the PASA Act therefore, must contain balance between liberty of citizen as guaranteed by Constitution and maintenance of public order. As a last resort, to prevent anti social activities after satisfying from the state of affairs carefully, the order can be passed to detain a person. The concerned authority is expected to take into consideration all the circumstances and the facts existing at the relevant point of time.

7. In the present case, the concerned order of detention is vitiated ex facie on the ground that such a preventive measures were not at all warranted and this fact is not taken into consideration by Police Commissioner, Surat, detaining authority. Learned Advocate for the petitioner makes a statement that in Crime Register No. I-76 of 2000, the petitioner has been in judicial custody since 4th of May, 2000. She further

makes a statement that in Crime Register No. 107 of 2000, the petitioner is in judicial custody till day from 5th May, 2000, in Criminal Register No. 16 of 2000 since 7th May, 2000 and in Crime Register No. 17 of 2000 since 8th May, 2000, till today the petitioner is in judicial custody. The detention order is passed on 29th June, 2000 considering the facts existing at the relevant time. The glaring fact which the Commissioner was required to take into consideration was whether the petitioner was otherwise capable of continuing his anti social activities if at all the petitioner was involved in such activity. The petitioner was in judicial custody for about two and half months continuously prior to passing of detention order on 29th July, 2000 and till today as per the statement made on behalf of the petitioner he is not released on bail and cases registered against him are pending in the court. When the petitioner was in judicial custody since 4th May, 2000 and was not capable of continuing alleged anti social activities, there was no reason which would invoke subjective satisfaction of detaining authority to pass detention order for the sole

purpose of preventing the petitioner from indulging in any anti social activities. The order of detention is required to be set aside on this ground alone.

8. In view of the above discussion, this petition is allowed. The detention order passed by the Police Commissioner, Surat, on 29th June, 2000, is hereby

ordered to be quashed and set aside. Petitioner - Mahesh Dayabhai Odd is ordered to be set at liberty forthwith, if he is not required for any other purpose. Rule is made absolute to that extent. D.S. is permitted.

(J.R. Vora, J.)

p.n.nair